

Notice of Allowability

Application No.

09/890,160

Examiner

N. Bhat

Applicant(s)

KIMURA ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Preliminary amendment of July 27, 2001.
2. ☒ The allowed claim(s) is/are 1-28.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 5 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____ | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

DETAILED ACTION

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In the Specification:

Page 1, line 1, insert --This application claims benefit under 35 U.S.C. 371 of PCT/JP00/05139 filed July 31,2000.--

In the Abstract:

Delete the Abstract in its entirety and insert

--A soft candy having superior softness when initially chewed and is resistant to adhering to the teeth and the method of preparing a soft candy is described. The soft candy comprises blending at least saccharide, vegetable oil and emulsifier, fine sucrose crystals having a crystal size of less than 30 microns which provides a confectionery product having an initial chewing ease of 5,000 to 23,000 g.s and/or teeth adherence of 100-1500 g. --

2. Applicant's preliminary amendment filed July 27, 2001 has been entered.

3. The following is an examiner's statement of reasons for allowance:

The invention relates to a soft candy and the method of making the soft candy, which has a very soft mouth feel when initially chewed and is resistant to adhering to teeth upon consumption. The soft candy comprises blending at least a saccharide,

vegetable oil, emulsifier and fine sucrose crystals having a crystal size of less than 30 microns and having initially chewing ease of 5,000-23,000 g.s. The method of making the soft candy comprises the steps of preparing a soft candy base raw material liquid by mixing saccharide, water, vegetable oil and emulsifier which is mixed and emulsified; boiling the liquid raw material base to provide a soft candy base; preparing a fine sucrose crystal composition by mixing and boiling sucrose a saccharide other than sucrose and water which is brought to a boil and then cooled so that sucrose crystals are precipitated to obtain a fine sucrose crystal composition. The fine sucrose crystal composition is then mixed with the soft candy based to obtain the soft candy, which does not stick to teeth upon consumption. The prior art does not teach or suggest seeding a confectionery product with fine sucrose crystal size of less than 30 microns and further does not teach having applicant's chewing ease of 5,000 to 23,000 g.s.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zietlow et al. '460 teach a method of making marshmallows which include providing a liquid sugar confection blend of saccharide, moisture and a foam structuring agent to which 0.01 to 45% of a dry particulate having a particle size distribution such that 90% have a particle size of less than 400 microns is added to the liquid sugar confectionery blend which is then aerated to form an aerated confection

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plastic foam and then extruding the aerated foam, which is then cooled to solidify the confection which is then dry and cut into pieces. The dry particulate material which is used as "seeding" include fibers such as inulin, and nutritional ingredients, micronutrients, biological active ingredients, medicinal herbs, and trace elements. The particle size of the dry particulate is less than 150 microns. There is not teaching or recognition in Zietlow et al. to use fine sucrose crystals having a particle size of less than 30 microns in making the confectionery product. Zietlow et al. '158 and '686 teach making aerated confectionery products by providing a marshmallow syrup or slurry which includes a sugar syrup, a structuring or gelling agent which is mixed in a carrier and heated and then admixed with a sugar syrup, which is heated until the temperature of the syrup is 11.5 to 121.1°C and has a moisture content of 5-30%, then the syrup is cooled, then the slurry can be seeded by adding sugar crystals at about 1-30% wherein the sugar should be less than 150 microns in size preferably 100 microns in size as the amount of ground sugar seeding increase the finished dried confections' texture becomes desirably more frangible. However, Zietlow does not teach using sucrose crystals having a particle size of less than 32 microns as claimed. Kondou et al. teach making soft candy, which comprise erythritol, a sugar or sugar alcohol other than erythritol, a fat and an emulsifier. Kondou et al. does not teach or suggest adding a sucrose having a particle size less than 30 microns into the confectionery product to provide a soft candy as claimed. Metzroth teaches a method for the continuous production of confectioneries where a grained confection from a supersaturated sugar solution is provided. Taylor et al. teaches a candy product with a fruit flavor, which has

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a chewy taffy-like consistency and slipperiness sufficient to avoid adhering to the teeth.

Glass et al. teaches providing a gum composition which has a uniform soft chew comprising a sweetener, acetylated monoglyceride, glycerin and one gum additive.


Yamada et al. teach a candy formed from a setting material which includes a boiled down and cooled jelly syrup which can be admixed into a bulk material comprising sugar, fats and oils, the candy produced is different than conventional candy using fondant cream in softness and smoothness.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879.

The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.


N. Bhat
Primary Examiner
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